

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIAM JAY SHARP,

Plaintiff,

v.

ALLY FINANCIAL INC.,

Defendant.

Civil Action No. 6:15-cv-06520

**DEFENDANT ALLY FINANCIAL INC.'S
MOTION FOR LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM**

Defendant Ally Financial Inc. (“Defendant” or “Ally”), by counsel, submits this Motion for Leave to file Supplemental Motion for Summary Judgment and state as follows:

1. Ally filed its Notice of Filing of Motion for Summary Judgment, Memorandum in Support of Motion for Summary Judgment, Movant’s Statement of Undisputed Material Facts, and Appendix on August 2, 2016. (Dkt. No. 26)

2. Plaintiff’s counsel filed Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Summary Judgment on August 30, 2016. (Dkt. No. 29)

3. Ally filed its Reply in Support of Defendant’s Motion for Summary Judgment on September 13, 2016. (Dkt. No. 38)

4. To date, the court has not ruled on the pending Motion for Summary Judgment.

5. On June 22, 2017, the Second Circuit decided *Reyes v. Lincoln Auto. Fin. Servs.*, No. 16-2104-cv, 2017 U.S. App. LEXIS 11057 (2d Cir. June 22, 2017) which addresses issues pertinent to the matter before this court. Specifically, this decision addresses revocation of consent when such consent is provided in a contractual agreement. Here, Plaintiff provided his consent to be contacted on his cell phone by providing his cell phone number on his a credit application to obtain financing from Ally. Plaintiff consented to being contacted using

prerecorded/artificial voice messages, text messages, and automatic telephone dialing systems. The *Reyes* decision is controlling and as applied to the facts of this matter, dispositive.

6. Based on the controlling *Reyes* decision, Defendant is seeking leave to submit a supplemental memorandum in support of Defendant's Motion for Summary Judgment (Dkt. No. 26).

7. Defendant's supplemental briefing will focus on narrow issues not yet argued or briefed to the Court but are material as to whether there is a genuine issue of material fact precluding the entry of summary judgment.

8. Granting Defendant's Motion would not prejudice Plaintiff. As evidenced by the significant time that has passed since the last filing in this case, any delay due to additional briefing is nonprejudicial.

9. There is good cause to grant Defendant's Motion. The subject of the supplemental briefing goes to the heart of the issues raised by the parties.

10. Defendant's Supplemental Memorandum in Support of Defendant's Motion for Summary Judgment is attached hereto as **Exhibit 1**.

WHEREFORE, Ally Financial Inc. respectfully request that the Court grant their Motion for Leave to File Supplemental Memorandum and award all other just and equitable relief.

Dated: July 24, 2017

By: /s/ Jason E. Manning
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CERTIFICATE OF SERVICE

I certify that on the 24th day of July, 2017, I electronically filed the foregoing *Motion for Leave to File Supplemental Memorandum in Support of Defendant's Motion for Summary Judgment* with the Clerk of the Court using the ECF system, which will send notification of such filing to:

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